The Solicitors' Journal

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CURRENT TOPICS

Legal Aid and Bad Debts

MR. JOHN PETERS, of Fareham, writing to the *Daily Telegraph* of 12th April, stated that one aspect of the Legal Aid and Advice Act, 1949, is causing lawyers concern. We quote from his letter with no comment save that it is an aspect which deserves more attention than it has hitherto received: "Where assisted persons possess disposable capital the certifying committees normally direct that the whole amount shall be paid when the legal aid certificate is granted. Unfortunately, however, it is our experience that most assisted persons have little or no disposable capital, so that certifying committees have to fix payment by instalments. . . . It is a matter for conjecture what percentage of assisted persons will pay these outstanding instalments after they have won or lost their cases. In the event of a mass failure due to increasing living costs or other causes, the Legal Aid Fund will inevitably be charged with an enormous number of bad debts. The result of this will be two-fold. Either our county courts will become flooded with summonses to recover these debts from the very persons the State has sought to assist, or else—which is more probable—the long-suffering taxpayer will be asked to foot yet another Welfare State deficit."

The Budget Proposals

IT cannot be pretended that the Budget proposals for increased taxation are good for any kind of trade other than that of armaments. The increase in the profits tax on distributed profits from 30 to 50 per cent., although excused on the ground that it is only half as big as it appears because it is allowed as a deduction in arriving at income tax assessments, can hardly encourage investment. Whether the "powerful incentive" which the CHANCELLOR OF THE EXCHEQUER said that it provided to put profits to reserve will sufficiently offset this disadvantage remains to be seen. New instructions have been given, as he announced, to the Capital Issues Committee, which will involve some changes in the conditions under which bonus shares will be permitted. By way of some compensation for small companies the limit of £2,500 per annum on the deduction to be made in respect of directors' remuneration in computing profits for profits tax purposes is to be increased with effect as from 1st January, 1951, subject to certain conditions, to £3,500 where there are two full-time directors to whom it applies, and to £4,500 where there are three or more. The initial depreciation allowances on new equipment and buildings are abolished. Other matters of special interest are the statutory effect that will be given to the special income tax arrangement with building societies and the resolutions which will provide for validation of long-standing practice, which is found to be at variance with the law in regard to the exemption from estate duty of certain Government securities held by persons domiciled and ordinarily resident abroad, the deduction of tax by paying agents from dividends paid by certain companies outside this country and the taxation of persons employed in this country by Commonwealth Governments in trading or business undertakings.

CONTENTS

The Magistrates' Courts

IN the *Evening Standard* of 13th April a leader by a writer who, it is reasonable to suspect, is entitled to the description "learned," sought to link up a recent case at Bow Street in which a person was convicted of larceny of a wallet and discharged the next day on the wallet being found by the prosecutor, with the overcrowded and overworked state of our magistrates' courts. While an error of this sort inevitably arouses alarm it is obvious that the shrewdest of magistrates can make it. The rarity of its occurrence is the strongest proof, if proof were needed, that the innocent have nothing to fear from a trial in an English court of justice. Of the work of the magistrates' courts the learned writer said: "The whole atmosphere becomes inimical to slow and careful deliberation. Solicitors and counsel know that the great unspoken crime is to be long-winded." Experienced advocates realise that this is an offence in any court, because to do anything but keep to the point in a concise manner is to waste public time. With the competent benches that practitioners know in the metropolis and elsewhere, brevity has aided rather than impeded justice. Practitioners also know that their greatest grievance, both on behalf of their clients and themselves, is against the magistrate or judge who, by taking too long over his work, advertises, to the profession at any rate, his insufficiency of experience or talent, or both. The remedy for the alleged defect is, according to the writer, to remove matrimonial business from the magistrates' courts: "The matrimonial cases are not handled properly in themselves and they hinder the careful and efficient dispatch of criminal business." We cannot admit the defect, the criticism or the remedy.

Psychiatry and Criminal Procedure

THE Institute for the Study and Treatment of Delinquency recently formed a committee of eminent lawyers and psychologists who have now prepared a booklet entitled "Psychology and Criminal Procedure." The scepticism that magistrates and lawyers sometimes express concerning the evidence of psychiatrists is tackled at the outset of the essay. Psychiatry is new, say the authors, and difficult to understand, because it has made such rapid progress. Some of the evidence seems incredible, but so do scientific discoveries in biology, physics, astronomy and other sciences. Psychiatrists are not accustomed to court procedure, and if they are didactic and too technical, that is understandable, and they are not the only experts who are poor witnesses. Evidence may appear at times to be exaggerated, and for this reason, it is said, magistrates would be well advised to take into account the qualifications and experience of particular witnesses. The booklet suggests that the prejudiced reactions of magistrates to psychiatric evidence would be much less frequent if magistrates, members of the Bar and solicitors were to follow the practice that is now compulsory for probation officers and social workers, namely, to acquire a working knowledge of the principles of psychiatry and of their application to the administration of our criminal law. That the psychiatric treatment of criminals is no passing fashion is shown by the increasing number of cases in which magistrates in recent years have recognised sexual offences as requiring psychiatric treatment, and by the fact that for the first time machinery has been set up under s. 4 of the Criminal Justice Act, 1948, for including mental treatment in a probation order.

The Institute of Advanced Legal Studies

THE Institute of Advanced Legal Studies, whose third annual report we have just received, records that LORD MACMILLAN was re-elected chairman of the committee of management and presided at its meeting each term. At the end of the session, Lord Macmillan intimated his wish to be relieved of membership of the committee in view of the need to reduce his commitments in London. The committee of management record their profound gratitude to Lord Macmillan for the encouragement and guidance he has so readily given during the Institute's first three years. The extended premises—in part of No. 26 Russell Square—which were brought into use during the session, have given a welcome increase in shelf space and have enabled more post-graduate classes to be accommodated. The greater use of the Institute generally is reflected in an increase of readers admitted by 38 to 150. The committee record with pleasure and gratitude the large number of welcome gifts of books which have again been presented to the library. Mention is made of the publication of *Survey of Legal Periodicals Held in British Libraries* and of the preparation of a Survey of Commonwealth law literature. Further work of this kind was undertaken dealing with United States law literature and it is largely completed, except for the task of consolidating and editing.

Sentences in the Magistrates' Courts

THE HOME SECRETARY expressly declared at the Northern Provincial Conference of the Magistrates' Association on 7th April, that the awarding of penalties is a matter for the discretion of the magistrates and not for the Home Secretary. He said that he was often asked in Parliament to send guidance to magistrates as to the penalties they should award, particularly with regard to offences of cruelty to children and dangerous driving offences. As a magistrate, but not as Home Secretary, he was surprised sometimes at the leniency of magistrates. He praised the English characteristic belief in the virtue of the amateur as contrasted with the expert. The fact that as individuals many of us disagree profoundly with sentences awarded by magistrates in serious cases may well show that the amateur needs a little more education of the right sort, in order to approximate him more closely to the expert. While it is obvious that the executive must refrain from attempting to direct the judiciary, it is also obvious that continued public dissatisfaction with sentences is a sympton which cannot be ignored.

The Howard Journal

THE Howard Journal is the official organ of the Howard League of Penal Reform and is published annually. Volume 8, No. 2, for 1951, has recently been issued, and its list of contents offers a variety of absorbing subjects for those who are interested in penal reform. CLAUD MULLINS, formerly a Metropolitan Police Court Magistrate, contributes a provocative and short essay on "New Methods of Sentencing the Guilty," in which, extending the provision in s. 17 of the Justices of the Peace Act, 1949, for the instruction of magistrates, he proposes that penology and psychology form part of the training of barristers before call to the Bar. More within the bounds of practicability is his suggestion that such authorities as prison governors, medical officers, probation officers or medical men or women who have been asked to examine those who have been found guilty should be given a right to volunteer reports to the courts before sentence is fixed. Other valuable articles are: "Group Therapy in Prisons" (JOHN MACKWOOD, psycho-therapist at H.M. Prison, Wormwood Scrubs), "A Survey of Prison Administration since 1945" (L. W. FOX, Chairman of the Prison Commission), "Criminal Statistics, 1949" (HUGH J. KLARE, secretary of the League), "Juvenile Courts: Local Variations" (WINIFRED A. ELKIN), "Penal Reform in the Colonies" (MARGERY FRY) and "Report of the Prison Commissioners for 1949" (GEORGE BENSON, M.P.).

A MECHANISED ACCOUNTING SYSTEM FOR FIRMS OF SOLICITORS

THE efficient keeping of the accounts of firms of solicitors has long been a problem. Whereas the business world long ago adopted mechanised accounting systems which have resulted in huge savings in office expenses through the elimination of duplication and the speeding up of all book work, solicitors have stuck to the old pen and ink methods and each firm, over the years, has developed a system which seemed suited to its clients, but in which there was no uniformity through the profession.

A mechanised accounting system for solicitors has now been developed which puts legal book-keeping on the same standard of accuracy, speed, economy and full information as that of the best banks and business institutions. This has been installed by a leading firm of London solicitors who are extremely well pleased with its performance and with the economies it has already achieved.

SOLICITORS ACCOUNT WITH THEIR CLIENT

SMITH WILLIAM JOHN ESQ. CARD No 1

DATE	DESCRIPTION	DETAIL	FIRMS A/C DEBIT	FIRMS A/C CREDIT	FIRMS A/C BALANCE	CLIENTS A/C DEBIT	CLIENTS A/C CREDIT	CLIENTS A/C BALANCE	
JAN 1 51	BY BALANCE BROUGHT FORWARD.							3000. 0.0	1
JAN 4 51	BY YOU.						1150. 0.0	4150. 0.0	2
JAN 5 51	TO JACK JONES & CO. PURCHASE MONEY FOR GENEVA HOUSE, CHARLESTON.	4250. 0.0							3
	FIXTURES & FITTINGS.	300. 0.0							4
	LESS DEPOSIT.	425. 0.0-							5
	BALANCE OF APPORTIONMENTS.	18. 6?3				4143. 6.3		1.13,9	6
JAN 6 51	TO STAMP DUTY ON CONVEYANCE.		85. 0.0		85. 0.00				7
JAN 14 51	TO OUR COST OF PURCHASE AS DELIVERED.		63.19.6		148.19.600				9
JAN 16 51	BY YOU.			147. 5.9	1.13.900				10
JAN 16 51	TO JOURNAL TRANSFER TO BALANCE.			1.13.9	0	1.13.9		0	11
									12
									13
									14
									15

Under mechanisation the accounting is reduced to four main items. These are :—

(1) Clients' ledger.

(2) Bill Disbursement Accounts—these are accounts which accrue the various expenses incurred on any single transaction made on behalf of a client and from which would be drawn the actual bills.

(3) The Miscellaneous (or Nominal) Ledger—this is the ledger to which are charged non-recoverable expenses such as heat, light, stationery, etc.

(4) The Sundry Bills Received Account—this account totals those receipts for bills which have not been posted to the clients' ledger.

Before a cheque is drawn on the client's section the ledger card is referred to to see if there is sufficient money available. If there is not a sufficient balance in the client's column to meet the cheque, a transfer is first made on the machine from the firm's column to meet the deficit, and the appropriate adjustment made between the firm's bank account and the client's bank account. The client's column therefore is never overdrawn and there is no danger of using other clients' money to finance a deficit on any particular client's account. The total of the balances shown in the clients' columns of the ledger cards must therefore equal the clients' account bank balance at all times.

These ledger cards are filed alphabetically and are kept in trays or loose leaf binders which lock to prevent the extraction of a card except when the posting is actually taking place.

Posting cash received is done daily from the incoming remittances. The posting media are first sorted into alphabetical order and the machine, operating as a simple adding machine, prepares the bank paying-in slip, one for the firm's account and the other for clients' account, which are automatically totalled.

The operator then posts this cash from the remittances to the clients' ledger accounts, preparing the cash received book simultaneously. Cash for the sundry bills account or the miscellaneous ledger would be posted in the same run. At the completion of the posting the machine automatically totals the cash book for the day, which will agree with the bank paying-in slips referred to above, thereby proving the accuracy of the work there and then.

In posting cash paid, a debit slip is made out which is also the cashier's authority to draw the cheque. These slips are now handled as with posting cash received. The accounts for which debit slips have been made are first inspected to ensure there are sufficient funds to bear the charge. This can be done infinitely more quickly than with the old system, since each account on the card is always balanced. In the event of a balance being insufficient the necessary transfer is made by the machine before the debit is posted, as mentioned and illustrated above.

Day by day the machine posts the totals of the cash book to a bank account, which always shows the balance of both the firm and its clients' money.

Payments in cash are posted by the machine to a cash disbursement sheet at the same time the client is debited. These postings would be made from the rough petty cash book which would have been written up at the time the cash was paid. In every firm of solicitors small items are paid out which escape being charged to clients such as contract stamps, etc. Under a mechanised system these amounts must be debited, and they are likely to come to a considerable sum in the course of a year. The balance on the cash account at any time must equal the cash in hand.

Some of the advantages which have been found to accrue from this mechanisation are as follows :—

(1) The preparation of accounts and statistics more accurately and at less clerical cost. It is estimated that in a busy office such an installation should pay for itself in two years, thereafter ensuring a substantial return on the original cost

(2) Extra control over the accounting system generally and the ability to know instantly the exact position of a client's account.

(3) The elimination of much copying work, which the machine does automatically, resulting in a saving of clerical labour and the removal of many possible sources of error.

(4) The release of staff for more important work and the very great help given to accountants, auditors and The Law Society in checking statements of position.

(5) Day by day mechanical proof of accuracy of all work done.

(6) Neat typewritten records.

The machine is highly flexible and may be used in reducing the effort required in many clerical operations. For firms doing rent collection the machine produces in one operation the schedule of rent due, the demand note and the receipt. The writing of bank cheques on the machine is a usual thing, and the keeping of bank accounts may thereby be much simplified.

The operation of a machine such as is used in the installation described here is usually entrusted to a girl operator. Girls rapidly become quick and accurate at this work. The operator may be someone already in the solicitors' employ, in which case she will be trained at the Burroughs School, or the school will supply an operator. It also provides operators for holidays, illness, etc.

A number of leading solicitors have inspected the system described briefly here and have been much impressed with it. It promises to instil some uniformity of accounting into a branch of professional life where it has been mainly lacking hitherto.

Costs

APPEALS—VI

WE were considering in our last article on this subject the costs involved in appeals to the House of Lords, and in going through the various items to be found in a bill of costs we reached the stage where the question of security arose.

The matter of security in connection with proceedings before other tribunals has been discussed earlier in this series of articles, and we observed that in these cases the question arose normally at the instigation of the opposite party. In short, there was no statutory requirement that security should be provided, and it was not until the opposite party in the proceedings became anxious as to whether he would be able to collect his costs in the event of his being successful that the necessity for security arose.

The matter is quite the reverse in the House of Lords, and the necessity for providing security there is not dependent on a demand being made by the respondents. The provision of security is a requirement which is imposed on the appellant by Standing Order No. V and by para. 9 of the Directions as to Procedure issued by the Parliament Office. The only instance where security will be dispensed with is in a case where the respondents agree to security for costs being waived; see Directions as to Procedure, para. 9 (xiii). Nor is the amount in which security is to be provided left to debate, for sub-para. (i) of para. 9 lays down that the appellant shall provide security in the sum of £700, and this figure will not be varied. Moreover the Standing Orders and Directions indicate the manner in which the security is to be provided.

There are two methods open to the appellants. They may, if they wish, pay into the security fund account of the House of Lords the sum of £700. This is by far the simplest method. Alternatively the appellants, where there are more than one, may enter into a recognizance for £500, and lodge a bond for £200, to the satisfaction of the Clerk to the Parliaments. If the appellant does not feel justified in entering into the recognizance, then a substitute may be found, but in this event the appellant's agent must lodge in the Judicial Office of the House of Lords a certificate of sufficiency. Prior to lodging the certificate, however, the appellant's agent (or solicitor) must serve on the respondent's solicitor notice of the proposed names and a copy of the certificate of sufficiency. It will then be open to the respondent's solicitor to call for evidence as to the financial stability of the proposed sureties. Unless the respondent consents the names of the parties to the appeal cannot be proposed as sureties, and it follows, therefore, that the appellant would have to obtain outside sureties, if he intends to provide security by the second method mentioned above. Where the appellant is a limited company, then there is no reason why a director of the company should not be adopted as one of the sureties, and indeed, two of the directors might enter into the bond without the consent of the respondent, since the directors would not themselves be parties to the appeal. However, it will have been noticed that not only must the respondents be satisfied as to the sufficiency of the sureties proposed, but the latter must also be satisfactory to the Clerk to the Parliaments. Even so, provided the other conditions are satisfied, the fact that the sureties are directors of the appellant company would not offend the terms of Standing Order No. V.

So much then for the practical side of providing security for costs. Now, to continue with our review of the costs of appeals to the House of Lords, where the appellant elects to pay into the security fund the sum of £700, then the solicitor will be entitled to a fee of 10s. for attending at the Parliament Office to pay the amount in. On the other hand, where the security is to be provided by recognizance and bond, then, unless this has been done at the time when the petition of appeal was served, the appellant's solicitor will attend on the respondent's solicitor to serve the certificate of sufficiency and to supply the respondent's solicitor with such information as he requires with regard to the sureties, for which attendance 10s. is allowed. Oddly enough, no provision is made in the scale of costs for either drawing and completing the certificate of sufficiency or drawing and copying the notice. One must assume therefore that this is covered by the fee of 10s. for service.

The recognizance and bond are prepared in the Parliament Office, and on receipt of these documents the appellant's solicitor is entitled to a fee of 10s. for perusing them, and a similar fee for each attendance on the appellant on his entering into the recognizance and on the sureties on their executing the bond. A further fee of like amount is allowed for attending at the Parliament Office to lodge the completed recognizance and bond. In those cases where the respondent agrees to waive security the appellant's solicitor is entitled to a fee of 10s. each for attending on the respondent's solicitor to obtain the consent of the respondent and for attending at the Parliament Office to lodge the document.

The next step in the preliminary proceedings is for the petition of appeal to be presented to the House. No attendance of the solicitors or counsel is required in connection with this step, and the presentation is published in the minutes of the House and an order is then made in the terms of the petition. Notification is sent to the appellant's solicitors when the order of the House is ready, and a fee of 10s. may be charged for attending at the Parliament Office to collect the certified copy of the order and for perusing it. A copy of the order is made, at a fee of 6d. per folio, and 10s. may be charged for serving the copy on the solicitor for the respondents. If there is more than one respondent and some are separately represented, then a copy of the order must be served on each, and a similar fee to the above will be allowed for this.

After service of the order the appellant's solicitor will draw and endorse on the original order an affidavit of service. A fee of 10s. is allowed for this and a similar fee each for attending to swear and to lodge the original order, with the affidavit of service endorsed thereon, at the Parliament Office.

The task, and also the expense, of preparing and lodging the documents for use on the appeal falls on the appellant, but such expense is, of course, a part of the costs of the appeal which will be in the discretion of the House of Lords. The first step is to select and list the documents which it is proposed to place before the House on the hearing of the appeal. A fee of 1s. 4d. is allowed for drawing and copying the list of documents to be used and 10s. for attending on the respondent's solicitor with the copy list and to obtain an appointment to settle it. If the respondent's solicitor amends the list by the addition of further documents, then a fee of 10s. will be allowed for perusing the amendments, and a similar fee for attending on the respondent's solicitor to settle the list. When the list is settled, then the documents included therein must be looked out and arranged in suitable order and for this an appropriate fee will be allowed. This is one of the rare instances in House of Lords bills of costs where there is any discretion to depart from the strict scale. Usually a fee of from one to three guineas is allowed for sorting and arranging the documents, according to the number of documents involved, and an even larger fee will be allowed in suitable cases.

It will be appreciated that the whole of the documents in connection with an appeal to the House of Lords must be printed and bound up in book form. When the documents to be used have been agreed with the respondent's solicitor, therefore, they must be handed to the printer with instructions as to the printing thereof. A fee of 10s. will be allowed for this attendance, and a similar fee for attending on the respondent's solicitor and arranging an appointment with him for the purpose of examining and checking the proof. For examining the proof in collaboration with the respondent's solicitor a fee of 2d. per folio will be allowed and a fee of 10s. each will then be allowed for attending on the printer with the revised proof, subsequently attending and paying his account, and attending the respondent's solicitor with eight prints of the documents.

We now come to the preparation of the appellant's case. This document is "a succinct statement of their argument in the appeal," to quote from para. 13 of the Directions as to Procedure. The case is prepared by the solicitor and is settled by counsel. A nominal fee of £1 is allowed as "Instructions" for the case and 2s. per folio for drawing it. Each of the two counsel will have a copy of the case to settle, and 6d. per folio for each copy may be charged for this purpose. A fee of 10s. for the attendance on each of the counsel with a copy of the case to settle is allowed, and this fee does not depend, as it normally does in the High Court, on the amount of counsel's fee. It may be that counsel will desire to settle the case in consultation and a fee of five guineas to each counsel is usually allowed for this. The solicitors will be entitled to a fee of 10s. for attending on each counsel and fixing the consultation and a fee of £1 for attending the consultation when the case is settled.

As soon as it is settled, the case must be copied for the printer and the fees mentioned above for attending on the printer and instructing him, examining the proof print, attending him with the revised proof and again to pay his account will be allowed.

Attention is again drawn to the fact that the printer's charges are regulated by scale, and the present allowance is two guineas per quarto page for printing, if it is plain printing, and double this sum may be allowed for tabular work. Prior to the war the maximum allowance was one guinea for a quarto page.

We will consider the costs involved in the hearing of the appeal in our next article.

J. L. R. R.

A Conveyancer's Diary

DETERMINABLE INTERESTS AND THE POWER OF ADVANCEMENT

In a short note on this subject which appeared in this Diary recently (see p. 201, *ante*), I referred to *Re Stimpson's Trusts* [1931] 2 Ch. 77 as authority for the statement that the giving of consent to the exercise of a power of advancement by a person entitled to a determinable life interest operated to bring about a forfeiture of the life interest. When I wrote that I had not seen the decision in *Re Shaw's Settlement* [1951] 1 T.L.R. 470. The correctness of the earlier decision had been doubted in some quarters (see, e.g., Wolstenholme and Cherry's Conveyancing Statutes, 12th ed., vol. 2, p. 1320, and Lewin on Trusts, 15th ed., p. 322 (*a*)), and it is now evident that these doubts were, to some extent at any rate, justified.

In *Re Shaw's Settlement*, *supra*, the plaintiff, in the events which had happened, was entitled under a settlement made in 1904 to a determinable life interest in a personalty fund, with remainder to his sons. The forfeiture clause was in common form and provided for the payment of the income of the fund to the plaintiff during his life unless and until some act or event should have happened or should happen whereby the income or some part thereof, if belonging to him absolutely, "would be or become vested in or charged in favour of some other person." The settlement also contained an express power of advancement exercisable for the benefit of any minor interested under the settlement, but not without the consent of any person entitled to a prior interest under the settlement. It was desired to exercise this power in favour of an infant son of the plaintiff, but before the power was exercised the plaintiff wished to satisfy himself on the question

whether by consenting he would forfeit his life interest. Harman, J., held that the plaintiff's consent would not have this effect, i.e., he refused, in the circumstances of this case, to follow *Re Stimpson's Trusts, supra*.

The judgment contains an interesting survey of the historical background to this question. It will be remembered that the statutory power of advancement was a creation of the 1925 legislation and that before 1926 the only power of advancement which could exist was an express power. It was thus customary to incorporate such a power in all well-drawn settlements, whether of personalty or of realty, as it is still in settlements of realty (the statutory power does not apply to capital money arising under a settlement operating under the Settled Land Act—Trustee Act, 1925, s. 32 (2)). A problem similar in all essentials to the one under consideration had come before the court in *Re Hodgson* [1913] 1 Ch. 34, when Neville, J., after observing that the forfeiture clause in the case was *prima facie* wide enough to cover the consent to an exercise of the power of advancement (which in that case had been given) went on to decide the question in this manner: "Now in order to understand what the settlement meant the whole document must be read together and must be read intelligently, and one must consider what are the objects sought to be attained by the words that have been used. To suppose that by giving effect to the power of advancement the husband committed a forfeiture under the previous forfeiture clause would to my mind be perfectly absurd and would be failing to give an intelligent construction to the whole of the settlement. I think it should be read as though there had been inserted at the end of the forfeiture clause, 'But this provision is not to affect any steps taken by the husband to enable the advance by the trustees hereinafter provided for to take effect.' I think it is clear in the present case that nothing has been done which is not in accordance with the terms of the advancement clause . . . The forfeiture clause was never intended to operate in that direction at all and it would be, I think, directly contrary to the whole intention of the deed if I held that it was so. I hold, therefore, that there has been no forfeiture."

The facts in *Re Stimpson's Trusts, supra*, were significantly different. In that case the settlement was a post-1925 settlement which contained no express power of advancement and the question which arose concerned the statutory power. On the first hearing of the summons, Luxmoore, J., held that if the plaintiff (who was both life tenant under and sole trustee of the settlement in question) were to give his consent to the exercise of the power of advancement, which *qua* trustee he desired to exercise in favour of his son, such consent would bring about a forfeiture of his life interest under the forfeiture provisions to which that interest was subject under the settlement. The summons was then stood over to enable the plaintiff to consider his position, and the plaintiff having decided to give his consent whatever the effect on his life interest, the summons was restored to enable the parties to argue a different point, whether proceeds of sale of land were within the power at all. It is on this question (which was decided in the affirmative) that the case is reported and there is no note of the argument on the other point. It is not, therefore, possible to say whether *Re Hodgson, supra*, was considered or not.

In the present case, Harman, J., followed *Re Hodgson, supra*, and refused to follow *Re Stimpson's Trusts, supra*, for two reasons. In the first place he thought the latter decision, for reasons outlined above, unsatisfactory. In the second place, the latter decision was distinguishable as having been decided on the statutory power, in relation to which it could not be said (or, at least, it could not be said as forcefully as Neville, J., had said in *Re Hodgson, supra*) that the application thereto of express forfeiture provisions produced an effect of contradiction evident on the face of the settlement. But the question whether *Re Stimpson's Trusts* was correctly decided on its own facts was left open to be decided when the question should arise again.

The position which has resulted from the present decision may thus be summarised as follows: consent to the exercise of a power of advancement by a person entitled to a determinable interest under a protective trust does not bring about a forfeiture of that interest if the power which it is sought to exercise is an express power, but it does bring about such a forfeiture if the power is the statutory power, provided of course that the forfeiture provisions do not themselves expressly exempt the giving of such consent from the events which are to produce a forfeiture. Such exceptions are commonly inserted in forfeiture provisions, and the statutory protective trusts contained in s. 33 of the Trustee Act, 1925, which it is often convenient to incorporate by reference in a settlement in lieu of setting out the common-form forfeiture provisions *in extenso*, also contain this exception.

It is interesting to note that both in *Re Stimpson's Trusts, supra*, and *Re Shaw's Settlement, supra*, the question which the court was asked to decide was a future question, but no difficulty was made on this score. A life tenant in doubt as to the effect of forfeiture provisions on some proposed course of action can, therefore, obtain a decision of the court before taking any positive step towards its execution.

Another case, *Re Wisely*, was heard together with *Re Shaw's Settlement*. Both the question and the decision were the same, the only difference between the two cases being certain verbal differences in the forfeiture and advancement clauses of the respective settlements. These two decisions thus underline what was implicit in the earlier decisions on this question, viz., that its solution depends on principle rather than on any minute examination of the provisions which have to be considered.

"A B C"

Landlord and Tenant Notebook

THE ALLOTMENTS ACT, 1950

THE Allotments Act, 1950, while not a striking, or glaring, example of the type of statute which comes into force piecemeal, contains one deferred provision of the nature indicated: s. 12 "shall have effect as from the time when Regulation sixty-two B of the Defence (General) Regulations, 1939, ceases to have effect as respects England and Wales." I will deal with the provisions of the section later; but now that the date in question has been fixed (by the Defence Regulations (No. 1) Order, 1951: S.I. 1951 No. 318) as 1st July next, I propose to discuss as a whole that part of the Act which concerns landlord and tenant.

The Act was passed roughly at the same length of time after the second world war as was the Allotments Act, 1922, after the first such event; but it does not repeal the 1922 Act, which may still be said to lay down the code governing tenancies of allotment gardens and allotments (intervening statutes were concerned with the provision of land for such

purposes rather than with the letting thereof). It does, however, effect a few amendments. As might be expected, they mainly concern security of tenure and compensation.

The Allotments Act, 1922, s. 1, limited modes of determination of tenancies of allotment gardens (an "allotment garden" is what the layman calls an "allotment": see s. 22 (1), and s. 14 (1) of the 1950 Act) to five: (*a*) a minimum six months' notice expiring on or before 6th April or on or after 29th September; (*b*), (*c*) and (*d*) the exercise of sundry options for specified purposes and (*e*) forfeiture. And s. 2, entitling an outgoing tenant to compensation for crops growing on the land in the ordinary course of cultivation and for manure applied to the land, applied when a tenancy was terminated by the landlord *and* so terminated either between a 6th April and a 29th September or by re-entry under one of the options contained in the above-mentioned (*b*), (*c*) or (*d*).

The Allotments Act, 1950, makes two amendments to the above. It first, by s. 1, makes the minimum length of ordinary notice to quit twelve months instead of six months (the limitation as to the time when it may expire, i.e., on or before a 6th April, or on or after a 29th September, being preserved); and then, by s. 2, extends the outgoer's rights to compensation for crops and manure to all cases except that of forfeiture. But the right is still limited to cases in which termination is effected by the landlord.

The third and fourth sections of the Act create new rights to compensation, in favour of tenant and landlord respectively, which are analogous to certain rights conferred by the Agricultural Holdings Act, 1948, and may have been added because of the above-mentioned extended security of tenure. By s. 3, when a tenancy comes to an end as the result of the exercise of one of the authorised options, or as the result of the landlord's own tenancy determining (when he is himself a tenant) or, where a local authority is landlord under s. 10 of the 1922 Act (entry on unoccupied land after notice) and its right to occupy ceases, the tenant is now entitled to compensation measured at one year's rent (at the rate payable immediately before the termination of the tenancy). It may be remembered that in the case of agricultural holdings consequential loss or expense was at one time a condition precedent to a claim for disturbance; the Agricultural Holdings Act, 1948, abolished this requirement, and the Allotments Act, 1950, s. 3, is thus in harmony with the law relating to farm tenancies. The section also declares that this compensation for disturbance is to be in addition to any compensation due under the 1922 Act, i.e., that for crops and manure.

The right introduced by s. 4 is a right to compensation "in respect of any deterioration of the land caused by failure of the tenant to maintain it clean and in a good state of cultivation and fertility" and can be compared to those provided for in ss. 57 and 58 of the Agricultural Holdings Act, 1948, which are, however, far more elaborate and distinguish between deterioration of part and deterioration of the whole of a farm. But while in the former case the measure of compensation is the cost of making good, and in the latter the decrease in the value of the holding, the Allotments Act, 1950, s. 4 (which cannot affect parcels exceeding 40 poles in extent) adopts "the cost of making good" measure. It also provides that when there have been successive tenancies a claim can, as it were, be carried forward; this provision is analogous to the Agricultural Holdings Act, 1948, s. 59.

Section 5 gives the parties rights of set-off: compensation against rent, compensation against compensation. The 1922 Act provided, by s. 2 (5), for reduction of any tenant's claim for crops and manure by any sum due, *under the contract of tenancy*, for wilful or negligent (*sic*) damage; that subsection is now repealed.

Section 6 contains exclusions from the foregoing provisions analogous to those found in s. 3 of the Act of 1922. It will be convenient to recall the latter first: the exclusion was of "any parcel of land attached to a cottage" and the effect is that no matter how the tenancy comes to an end the tenant is entitled to compensation not only for crops (including fruit) growing on the land in the ordinary course of cultivation and for manure applied to the land, but also for labour expended on the land and for fruit trees, etc., provided with the landlord's consent, and for drains and other improvements made with such consent. The exclusion brought about by s. 6 of the new statute extends not only to land attached to cottages but also to land let by a local authority under Defence Regulation 62A (any local authority which is in occupation of land may let it for use as allotment gardens); but excepted from this exclusion of land let by local authorities are the special compensation for crops and manure provisions of s. 2 (mentioned at the end of my fourth paragraph).

The next substantial change affecting landlords and tenants is that of the previously mentioned s. 12. Defence Regulation 62B, mentioned in my first paragraph, was the one which suspended restrictions, whether contained in leases, etc., or imposed by statute, on the keeping of pigs, hens and rabbits. This will cease to have effect on 1st July next, when s. 12 comes into force. Like the Defence Regulation, the section applies to any land, not only to allotments, but in other respects its scope is smaller: (i) pigs are omitted; (ii) it will not avail those who keep hens or rabbits by way of trade or business; and (iii) restrictions imposed by or under any enactment can no longer be defied. The proviso that the keeping of animals in such a place or in such a manner as to be prejudicial to health or a nuisance is not legalised, is repeated; and the omission to mention cockerels will still provide the serious-minded with food for reflection or research on the question whether the word "hens" covers poultry of both sexes (the Interpretation Act, 1889, s. 1, does not make words importing the female gender include males), and the flippant with outlets for humour.

R. B.

OBITUARY

MR. G. F. CARR

Mr. George Frederick Carr, retired solicitor, formerly of Brighton, died at Harrogate on 3rd April, aged 84. He was admitted in 1890.

MR. W. H. COWBURN

Mr. William Henry Cowburn, retired solicitor, of Nevin, died on 10th April, aged 70. He was admitted in 1906.

MR. H. G. E. CRAFTER

Mr. Herbert George Edward Crafter, President of the Hastings and District Law Society, died on 24th March, aged 71. He was admitted in 1908.

MR. A. J. C. HIRST

Mr. Arthur John Croslegh Hirst, solicitor, of Halifax, died on 11th April, aged 52. He was admitted in 1923 and had been chairman of the Huddersfield, Halifax and Wakefield Rent Tribunal since its inception in 1946.

MR. W. E. SINGLETON

Mr. William Edward Singleton, retired solicitor, formerly of Essex Street, London, W.C.2, died on 13th April, aged 76. He was admitted in 1896.

HERE AND THERE

TRIP ABROAD

WILL you come on a little trip abroad this week, if you please? Or is it abroad? It's a free and independent republic with not only its own language but its own alphabet as well. Going both ways you'll find the Customs people as interested in your travelling effects as in the case of any other international exits and entrances, and passports are carried. On the other hand, money is no object and it is rather pleasant to find one place at least beyond the seas where they look at a pound note without wincing and even accept it over the counter without the formality of its transmutation into some other and differently denominated currency calculated to confuse or bewilder all who have neglected to brush up their mental arithmetic, for here an otherwise extremely individual coinage follows precisely the unpredictable lines of our own. Nor are the inhabitants aliens within the meaning of our law, since the English genius for compromise and the art of shelving the logical implications of the inescapable has invented an intermediate status that leaves as much as possible to faith, hope for the best, the imagination and an instinct for the empirical. The country is, of course, Eire, and I invite you over because, happening to be there myself, it's the easiest way of writing this column.

DUBLIN LEGAL WORLD

WELL, as we're all lawyers together, no doubt you'd like to have a look at the Dublin legal world. So come along to the Four Courts and the King's Inns. The structure of the legal profession is the same as our own, that is to say, there is the same separation of functions of barristers and solicitors. The structure of the courts is, however, quite different, working up from District Court, through Circuit Court to High Court and the Supreme Court (a final Court of Appeal of five judges), all exercising both civil and criminal jurisdiction. To get an idea of perspective and status one might say that the District Courts rank rather higher than our Magistrates' Courts and the Circuit Courts rather higher than our County Courts. There is also a Central Criminal Court exercising the High Court's criminal jurisdiction and a Court of Criminal Appeal, but a stranger will hardly venture to discuss their status, since an article in the *Irish Law Times* of 7th April, analysing the implications of the recent decision of *The People* v. *Killian* and the impact of the Constitution of 1937, promulgated the proposition that the latter court had no legal existence. It may be so, but the Irish legal world doesn't seem to be worrying. Well, the centre of legal practice is the majestic structure of the Four Courts, James Gandon's classical masterpiece of 1785. Its stone façade and central dome dominate a stretch of the Liffey Quays. (They are rather like an Irish translation of the Paris Quays, booksellers and all.) In the sad troubles of 1916–22 the building was completely gutted. There were those who, either from a hatred of the old British ascendancy or from an equally emotional preference for the twentieth century as such, were for sweeping away the ruins altogether. In the end, however, the shell was preserved with a new filling producing a rather strange contrast. From without the building is all dignity, the cold dignity of classical perfection; you pass within and find the curiously flat and toneless atmosphere of the twentieth century pursuing its pet characteristic preoccupations of tidiness and convenience. The great entrance hall under the central dome, once splendidly paved, is now rubber floored. The court rooms once lit by wall windows and warmed by fireplaces are now, of course, lit from above, warmed by hot water pipes and furnished up to approved board room standards. Counsel have upholstered benches. The jury too (they are still very fond of juries in Eire) likewise sit soft. The judge does not sit quite as close to the ceiling as in the Strand Law Courts, but the acoustics are peculiar and the occupants of the public gallery tend to hear better than anyone else what is going on. The Irish Bar, you know, of course, doesn't work from chambers. Counsel congregate in the Library where clients come to the door to fetch them out. In the Library everyone helps everyone else. The youngest junior can approach the most senior S.C. (no more K.C.'s, it's Senior Counsel instead). The more eminent leaders, so they say, have found that before venturing to approach them beginners like to consolidate their ideas by taking a few preliminary opinions from less distinguished lights. Result: the final exalted consultees tend to find that the consulters, by the time they reach them, know a great deal more about the subject than they do themselves; it makes them rather cagey. The post-rebuilding Library, by the way, has about as much atmosphere in its appearance as the average municipal library. On the establishment of the Irish Free State in 1922 the judges appointed to its courts abandoned their robes. A contemporary cartoon hung in one of the Bar rooms illustrates the caption:

> "Little Bo Peep has lost her sheep;
> To the Soldiers' Song she'll find them.
> To its martial strain they'll return again
> Leaving wigs and robes behind them."

The Bar, however, kept to their traditional costume and soon the Bench were back to robes to the extent of black gowns and the small court wig. At the Four Courts the solicitors have their professional headqu rters, a long spacious room hung with the portraits of past and contemporary heads of the profession. Appointments to the District Courts, by the way, are made alternately from the ranks of the Bar and of the solicitors.

KING'S INNS

THE professional headquarters of the Bar reside in the King's Inns—plural in name but a single building designed by James Gandon, the architect of the Four Courts. A stone building with the same grey gravity as Stone Buildings, Lincoln's Inn (both belong to the start of the nineteenth century), it stands on a rise at the head of a short street of fine brick Georgian houses fallen far below the state of their original prosperity. (There is still alive a suggestion that the Benchers should acquire and restore them for occupation by members of the Bar.) The shallow dome supported on pillars which dominates the entrance is similar to that above the Four Courts. Behind, the small park covered with untrimmed grass has been opened as a recreation ground. Inside, the building shares with the neighbourhood that surrounds it an atmosphere of neglected magnificence and faded architectural glory. Splendid stone flagged corridors, a stately ceremonial staircase, lofty rooms with large generous windows but stained and discoloured walls and fine moulded ceilings grey with dust are all adjuncts to the sombre grandeur of the great dining hall. To eat in it must be rather like taking a meal in one of Wren's finer churches, which it much recalls, enormously lofty with its windows high in the walls. One looks instinctively for a reredos behind the Bencher's dais. The seating arrangements are unexpected to an English eye, for the furniture recalls a private dining room rather than a refectory, and the members sit four together at separate tables. Round the walls hang the age-blackened portraits of former judges. Had Dickens ever visited King's Inns what a picture he could have drawn! The whole place is material all ready for his pen and crying aloud for it.

RICHARD ROE.

Mr. DAVID HALL, assistant solicitor to Fulham Metropolitan Borough Council, has been appointed assistant solicitor to Reading County Borough Council.

Mr. DONALD WILLGOOSE, assistant solicitor in the Wigan Town Clerk's department, has been appointed assistant solicitor to Widnes Corporation.

REVIEWS

Profits Tax. By N. E. MUSTOE, M.A., LL.B., of Gray's Inn, Barrister-at-Law. 1951. London: Sir Isaac Pitman and Sons, Ltd. 45s. net.

The characteristic of this book lies in the felicitous grafting of numerous arithmetical examples and statements of established revenue practice on to a helpful and detailed discussion which, while always germane to the subject, does not hesitate to recall where appropriate the outstanding features of related topics from other departments of tax law. Thus the sections on Investment Income, Controlling Interest and Carrying on Business in the United Kingdom are embellished with explanations of the analogous cases on Excess Profits Duty, E.P.T. and Income Tax, supported by generous quotations. Likewise the allowances under the Income Tax Act, 1945, are fully treated since they are available for Profits Tax purposes.

Any book on tax law should base itself firmly on the text of the relevant statutes, which it is essential to cite *in extenso*. Mr. Mustoe's method of doing this is to introduce the quotations piecemeal into a logical arrangement of the subject of his own devising. The merit of this plan compared with the time-honoured scheme of commenting section by section on the statutes in chronological order is a question of taste, but so long as the user is forewarned there is no reason why he should not quickly accustom himself to referring to the page index constituted by the Table of Statutes when he wishes to obtain the author's guidance on a particular provision.

The present work is fully comprehensive, and with so much ground to be covered at a stage when the tax in its present form is still comparatively new, it is perhaps not surprising that some looseness of expression is to be discovered here and there. For example, on p. 17, a general statement that colportage was held not to be a trade requires limiting to the facts of the particular case which prompts it, and on p. 124, a similarly broad statement asserts that a person having a power of attorney to vote cannot possess a controlling interest. Nor does the revised para. 7 (1) of the Fourth Schedule to the Finance Act, 1937, "correspond" with the Excess Profits Duty provision cited on p. 98. If these criticisms are thought to be pernickety, it might be rejoined that a subject already complex and abstruse requires to be enlightened by the utmost clarity of style. The reader is entitled to expect that every care should be taken to avoid increasing his perplexity by such distracting considerations as the necessity for working out the exact import of the terms "include" and "exclude" in the discussion of the *Gas Lighting Improvement* case on pp. 98–99.

If these blemishes on an otherwise painstaking book are removed, the work deserves to grow to be acknowledged as a reliable authority on a subject of increasing importance.

British Nationality, including Citizenship of the United Kingdom and Colonies and the Status of Aliens. By CLIVE PARRY, M.A., LL.B. (Cantab.), of Gray's Inn and the South-Eastern Circuit, Barrister-at-Law. 1951. London: Stevens & Sons, Ltd. 30s. net.

Though issued as a separate book, this slim but concentrated monograph is of a piece, as regards both arrangement and authoritative treatment of its subject, with the sixth edition of Dicey's Conflict of Laws. Indeed only the activities of an as yet unexhausted Legislature seem to have saved it, or part of it, from being included as a mere chapter in that work. Provided as he now is with this wholly admirable treatise on a topic from which Parliament has now turned aside; the reader will stand aloof from the controversy which has apparently divided Dicey's editors on the nice question whether Nationality is or is not part of the Conflict of Laws. The compromise of issuing a separate volume has its advantages of convenience to weigh against the drawback of increased expense.

Mr. Parry's first fifty-odd pages deal with the concept of nationality and with British subjecthood before 1949. The major portion of the book is devoted to a detailed study of the Act of 1948 which has become the basis of this branch of the law. The theoretical and practical aspects of the subject are exhaustively discussed according to the well-tried method of rule, comment and illustration. One measure of the usefulness of a law book is the extent of uncharted territory which it explores. In the nature of this subject very few reported cases on the old law are to be found; there are none at all since 1948. Nevertheless there is no dearth here of helpful illustration by hypothetical cases. As an instance of the thoroughness of Mr. Parry's explorations, we may cite the passage on pp. 86–87, in which is considered the possible application of the principle of the *William Joyce* case to British subjects without citizenship and to those holding British passports issued elsewhere than in the United Kingdom. But this is one among a hundred such valuable leads given to the reader concerned with practical advisory problems on the new citizenship, its acquisition and loss. A concluding chapter defines the status of aliens.

A Text-Book of the Law of Tort. Fifth Edition. By Sir P. H. WINFIELD, K.C., F.B.A., LL.D. (Cantab.), of the Inner Temple, Honorary Bencher and Barrister-at-Law. 1950. London: Sweet & Maxwell, Ltd. 40s. net.

The four previous editions have established Sir Percy Winfield's work as a favourite textbook for students of what is intrinsically the most interesting branch of the law. The author's inimitable combination of leisured explanation and forthright expression heightens the attractions of the subject matter just as surely on a reviewer's re-reading as when the book first appeared in 1937. But this field of law has been fertile of recent decisions, of which something like a hundred have had to be added since 1948. Some of these, like *Jacobs* v. *L.C.C.*, *Caminer* v. *Northern Investment Trust* and *Braddock* v. *Bevins*, have given Professor Winfield occasion for a more or less extended discussion in the text. There is something especially fascinating in remarking how a writer of authority epitomises a leading case which the reader has "experienced" at the successive stages of press report, fully reasoned judgment, periodical article (sometimes, alas, marred by wordiness or special pleading), and finally—perhaps as an addition to an already existing footnote, thus "See, too, *Cutler* v. *Wandsworth Stadium*." Indeed, it requires a master in the fullest sense to induce in a student through the printed word the proper perspective view of cases which have become current topics in the profession during a brief hour of notoriety. May we, by the way, ask a nodding Homer how he distinguishes one from the other the two cases of *Reading* v. *Regem* [1948] 2 All E.R. 27 and *Reading* v. *The King* [1949] 2 K.B. 232, referred to on p. 84?

Possibly the feature which most distinguishes Professor Winfield's textbook from other well-known students' works on the same subject is the painstaking attention he gives to those torts and legal conceptions which are less commonly met with but nevertheless of importance both practically and for examination purposes. How often are such topics as trespass *ab initio*, maintenance and champerty, slander of goods, or abuse of quasi-judicial powers made more obscure for the student by sketchy treatment amounting to little more than a cursory reference to the few decided cases? In *Winfield* the reader will find them set in due proportion and not less carefully explained than defamation and negligence, on which there is admittedly so much more to be said. This is certainly the textbook for any student who does not mind laying himself open to be infected with a healthy enthusiasm for his work.

NOTES OF CASES

COURT OF APPEAL

PURCHASE TAX: PREVIOUS SALE

Commissioners of Customs and Excise *v.* Rensop Drapers, Ltd.

Asquith and Birkett, L.JJ., and Danckwerts, J.
5th February, 1951

Appeal from Somervell, L.J., sitting as an additional judge of the King's Bench Division.

The defendants bought a quantity of cloth from one Green, who had bought it from a limited company. The defendants and the company were registered in accordance with s. 23 of the Finance Act, 1940, but Green was not a registered wholesaler. When he purchased the cloth, there was included in the price the equivalent of the purchase tax chargeable on that transaction. It was not clear whether tax had in fact been paid by the company, but it was not disputed that they were accountable for the tax on the sale to Green. The plaintiff commissioners claimed that purchase tax was also chargeable in respect of the sale by Green to the defendants, who contended, however, that by virtue of s. 15 of the Finance Act, 1944, no further tax was due. Somervell, L.J., gave judgment for the commissioners. The defendants appealed. By s. 15 of the Act of 1944, " if a wholesale merchant . . . proves . . . in the case of any goods in respect of which tax has become chargeable by virtue of a purchase made from him . . . that tax also became chargeable in respect thereof on a previous occasion by virtue of a purchase thereof . . . the commissioners may remit payment of the first mentioned tax . . ."

DANCKWERTS, J., giving the first judgment, said that in his opinion, on the true construction of s. 15 of the Act of 1944, wholesalers could not claim the relief from purchase tax given by the section in respect of a sale by them by showing that that tax had previously been borne on a purchase of the goods by someone else: the section only gave the wholesalers that relief where it was they themselves who had made the previous tax-bearing purchase.

ASQUITH and BIRKETT, L.JJ., agreed.

Appeal dismissed.

APPEARANCES: *F. Hallis* (*Tarlo, Lyons & Co.*); *J. P. Ashworth* (*The Solicitor, Customs and Excise*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

MASTER AND SERVANT: COMMISSION AFTER DISMISSAL

Sellers *v.* London Counties Newspapers, Ltd.

Evershed, M.R., Singleton and Birkett, L.JJ.
7th February, 1951.

Appeal from Clerkenwell County Court.

The plaintiff was employed by the defendants as a commercial traveller. He was paid by salary and commission on orders obtained by him for advertisements in the defendants' newspapers. On 28th April, 1950, he was given a week's notice and left on 4th May. In his action for wrongful dismissal the county court judge held him entitled to a month's notice expiring on 28th May, 1950. The county court judge, in awarding damages, refused to include commission on advertisements printed by the defendants after 28th May. The plaintiff appealed.

EVERSHED, M.R., dissenting, said that in the case of an employee, unlike that of an independent contractor such as an estate agent, *prima facie* the remuneration which the employer promised to pay as consideration for services to be rendered was payable only during such times as services were rendered in fact. The authorities supported and were only consistent with the view that in the case of a contract of service between master and servant all right on the servant's part to remuneration by commission or otherwise would cease on the termination of his service, unless his contract clearly provided to the contrary. The observations of McCardie, J., in *Marshall* v. *Glanvill* [1917] 2 K.B. 87, at p. 92, were in point. In his opinion the appeal should fail.

SINGLETON, L.J., said that if the plaintiff had obtained in April an order accepted by the defendants for an advertisement in one of the defendants' newspapers in May, June and July, he had done all that was required of him to earn commission on that order, but payment was not to be made by the defendants unless and until the advertisement actually appeared. He had done his part in obtaining the order. If the defendants accepted it and inserted the advertisement, the plaintiff was then to be paid his commission and the defendants could not by terminating the employment deprive the plaintiff of the commission which he had already earned, subject, of course, to the advertisement's appearing. A more difficult question arose in respect of an order for an advertisement to continue until cancelled. If the defendants accepted from the plaintiff an order in those terms and acted upon it, he (his lordship) took the view that the plaintiff was entitled to commission. It was not a case of a " repeat " order as that expression was normally understood. It was an order obtained by the plaintiff during his employment and accepted by the defendants, and he did not see that a distinction could be drawn between that and an order for, say, twelve monthly or weekly insertions. In each case the insertion was the direct result of the order obtained by the plaintiff and the defendants accepted it, with the knowledge that commission would be payable to the plaintiff. The appeal should be allowed.

BIRKETT, L.J., agreed that the appeal succeeded.

Appeal allowed. Order for an account.

APPEARANCES: *Sir G. Russell Vick*, K.C., and *H. H. Harris* (*Rollit, Sons & Haydon*); *J. D. Casswell*, K.C., and *J. May* (*Tucker, Turner & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COUNTY COURT: NOTICE OF APPEAL WITHOUT LEAVE

Cumbes *v.* Robinson (No. 1)

Somervell, Singleton and Denning, L.JJ.
14th February, 1951

Preliminary objection to an appeal from Worcester County Court.

The plaintiff was the tenant of a shop and the dwelling-house above it, of which the defendant was the landlord. In proceedings to fix the standard rent the tenant also claimed £4 as rent overpaid to the landlord. The county court judge having decided for the tenant, the landlord filed a notice of appeal without first obtaining the leave of the judge to appeal; and he did not apply to him for leave until the time for entering an appeal had expired. Leave was then given. By s. 105 of the County Courts Act, 1934, " without the leave of the judge there shall be no appeal (*a*) in any action founded on contract or on tort . . . where the debt or damage claimed does not exceed twenty pounds." It was objected for the tenant that the appeal was not properly constituted. It was contended for the landlord that s. 105 was satisfied if leave to appeal were obtained before the hearing of the appeal.

SOMERVELL, L.J., said that he agreed with the tenant that the leave of the judge must be obtained before the notice of appeal was filed. That, however, did not end the matter, for it was not disputed that a party who had omitted to get leave to appeal could apply for an extension of time in which to file a further notice, if he had filed one already; and, if that were done, then, subject to costs, the matter could be put in order. Normally applications to extend the time had to be by notice of motion, supported by affidavit; but in the present case the court thought that the landlord should be treated as having obtained an extension of time, and the appeal must proceed.

SINGLETON and DENNING, L.JJ., agreed. Objection overruled.

APPEARANCES: *Nigel Robinson* (*Peacock & Goddard*, for *Johnstone, Williams & Walker*, Nottingham); *L. A. Blundell* (*James Smith*, London and Worcester).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

STANDARD RENT: SHOP WITH HOUSE ABOVE

Cumbes *v.* Robinson (No. 2)

Somervell, Singleton and Denning, L.JJ.
14th February, 1951

Appeal from Worcester County Court.

Premises within the Rent Restriction Acts consisting of a shop and dwelling-house above were let by the defendant to the plaintiff at a weekly rent of £1. The tenant sublet the shop at £2 a week, and himself occupied the dwelling-house. The sub-tenant left in September, 1948, the tenancy having been determined by a notice to quit served by the landlord in August. The landlord then granted the tenant separate leases for five

years of the shop and the dwelling-house, the rent for the shop being £2 a week and that for the house £1 a week. The tenant brought these proceedings for the fixing of the standard rent of the premises, which he contended was £1 a week, the rent at which the shop and dwelling-house were first let to him together under one lease. The county court judge fixed the standard rent at £1 a week, distinguishing *Phillips* v. *Hallahan* [1925] 1 K.B. 756, because the tenant was still the tenant of all the premises, at a weekly rent of £1, at the time when the separate leases were made. The landlord appealed.

SOMERVELL, L.J., said that in *Phillips* v. *Hallahan, supra*, Bankes, L.J., held that there was nothing in the Rent Acts to prevent a landlord who had obtained possession of premises, part of which consisted of business premises, from letting off that portion as business premises, although, if he had let the premises as a whole, they would continue to be within the protection of the Acts. The position here was somewhat different in that when the negotiations for the two separate leases were concluded the tenant occupied the whole of the premises. *Prima facie* he could not see that that fact made any difference to the principle laid down by Bankes, L.J. While there could be no contracting out of the Acts, there was nothing in them which prevented a shop and adjoining living premises from being let separately although they had at one time been let together. He was unable to see why that should not be done as between a landlord and a tenant under a notice to quit, or, if they agreed, without a notice to quit. The only possible conclusion was that these premises were not let together, but separately, and the tenant was not entitled to have the rent under the separate leases reduced to the amount of the standard rent when they were let together. He was, however, entitled to ask the county court judge to apportion the original rent of £1 in respect of the living premises.

SINGLETON and DENNING, L.JJ., concurred. Appeal allowed.

APPEARANCES: *Nigel Robinson* (*Peacock & Goddard*, for *Johnstone, Williams & Walker*, Nottingham); *L. A. Blundell* (*James Smith*, London and Worcester).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

HOSPITALS: LIABILITY FOR NEGLIGENCE OF HOSPITAL STAFF

Cassidy *v.* Ministry of Health

Somervell, Singleton and Denning, L.JJ.

15th February, 1951

Appeal from Streatfeild, J., sitting at Liverpool Assizes.

The plaintiff suffered serious and permanent injury to his hand after an operation had been properly and carefully performed upon it. On his appeal, the Court of Appeal, reversing Streatfeild, J.'s findings of fact, held that the case was one of *res ipsa loquitur*, and that a jury would have been entitled to find that there had been negligence on the part of the operating surgeon (whom the Ministry brought in as a third party) in the plaintiff's post-operational treatment. The question at issue was the liability of the defendants, as the hospital authority, for that negligence. (*Cur. adv. vult.*)

SOMERVELL, L.J., reading his judgment, and having considered *Gold* v. *Essex County Council* [1942] 2 K.B. 293, and *Hillyer* v. *St. Bartholomew's Hospital* [1909] 2 K.B. 280, said that in his opinion the operating surgeon here had a contract of service. He was employed like the nurses as part of the permanent staff of the hospital. If, as Lord Greene, M.R., had said in *Gold's* case, *supra*, a patient were entitled on entering a hospital to expect nursing and therefore the hospital were liable if a nurse were negligent, then it seemed to him (Somervell, L.J.) that the same must apply in the case of the permanent medical staff. In *Collins* v. *Hertfordshire County Council* [1947] K.B. 598 Hilbery, J., found the defendant hospital authority liable for the negligence of a house surgeon, whose position he regarded—and he (the Lord Justice) agreed with him—as covered by the *ratio decidendi* in *Gold's* case, *supra*. In his opinion the appeal should be allowed.

SINGLETON, L.J., read an assenting judgment.

DENNING, L.J., reading his judgment agreeing that the appeal succeeded, said that the reason why the employers were liable in such cases as this was not because they could control the way in which the work was done—they often had not sufficient knowledge to do so—but because they employed the staff, had chosen them for the task, and had in their hands the ultimate sanction for good conduct—the power of dismissal. All that seemed so clear on principle that it was to be wondered why there should ever have been any doubt about it. Yet for over thirty years—from 1909 to 1942—it was the general opinion of the profession that hospital authorities were not liable for their staff in the course of their professional duties. It had been said by Goddard, L.J., in *Gold's* case (at p. 313) that the liability for doctors on the permanent staff depended "on whether there is a contract of service and that must depend on the facts of any particular case." He (Denning, L.J.) ventured to take a different view: he thought that it depended on the answer to the question who employed the doctor or surgeon: was it the patient, or the hospital authorities? If the patient himself selected and employed the doctor or surgeon, as in *Hillyer's* case, *supra*, the hospital authorities were of course not liable for his negligence. But where the doctor or surgeon, were he a consultant or not, was employed and paid, not by the patient but by the hospital authorities, he (his lordship) was of opinion that those authorities were liable for his negligence in treating the patient. It did not depend on whether the contract under which he was employed was a contract of service or a contract for services. That was a fine distinction which was sometimes of importance; but not in cases such as the present, where the hospital authorities were themselves under a duty to use care in treating the patient. Appeal allowed.

APPEARANCES: *Sir Noel Goldie*, K.C., and *Glyn Burrell* (*John A. Behn, Twyford & Reece*, Liverpool); *Glynn Blackledge*, K.C., and *A. Rankin* (*Solicitor, Ministry of Health*); *Basil Nield*, K.C., and *J. S. Watson* (*Linklaters & Paines*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

NEGLIGENCE: CLEANERS' LIABILITY FOR DAMAGE TO DRESS

Curtis *v.* Chemical Cleaning and Dyeing Co.

Somervell, Singleton and Denning, L.JJ. 16th February, 1951

Appeal from Westminster County Court.

The plaintiff took a wedding dress to the defendant cleaners for cleaning. The shop assistant gave her a receipt and asked her to sign it. The plaintiff asked why she was required to sign it, and the assistant said that it was because the defendants would not accept liability for certain specified damage, that was, to the beads and sequins on the dress. In fact the receipt contained a condition that the defendants should not be liable for any damage however caused. The dress became stained, the plaintiff claimed damages, and the defendants sought to rely on the exempting condition. The county court judge, finding that the defendants had failed to disprove negligence on their part, held that the oral statement by the assistant amounted to an innocent misrepresentation as to the limitations on the defendants' liability for damage, and that the defendants were thereby precluded from relying on the document. The defendants appealed.

SOMERVELL, L.J., said that the defendants argued that the statement as to beads and sequins was only used as an illustration of what was covered by the exemption clause. He was unable to take that view. What the statement conveyed to the plaintiff was that liability for certain risks only—in this case to beads and sequins—was excluded. That was plainly an innocent misrepresentation, because the document exempted the defendants from all liability. It was clear that the plaintiff had been induced to sign the document by the misrepresentation. The appeal would be dismissed.

SINGLETON, L.J., agreed.

DENNING, L.J., agreeing, said that this was a small case, but an important one. Many people signed documents which they later found to have imposed limitations on common-law liabilities. If the relations of the parties to a contract were governed by a written document the signature normally provided irrefragable evidence that the contract was binding: but if it was induced by innocent misrepresentation the exemption could not be relied on. Any behaviour by words or conduct was sufficient to amount to misrepresentation. The words used might be literally true, but nevertheless might amount to a misrepresentation, not because of what was said but because of what was unintentionally left unsaid. Here an impression had been created that liability was excluded only in the case of damage to beads and sequins. The second point made for the defendants was that, even if there had been an innocent misrepresentation, the plaintiff could not avoid the terms of the contract as there was no right to damages, but only to rescission, and here the contract had been executed. He could not think that right. He thought that an executed contract could be rescinded, and that, if it were rescinded,

the plaintiff could sue in tort. But here was a simpler ground: if an exemption were obtained by an innocent misrepresentation, the party could not rely on that exemption. Whether that was a rule of law or of equity was no longer a matter of importance. Appeal dismissed.

APPEARANCES: *Geoffrey Lawrence*, K.C., and *F. W. Wallace* (*Edward F. Iwi* for *Hanchett Copley & Hails*, Edgware); *M. Turner-Samuels*, K.C., and *D. J. Turner-Samuels* (*Pearce and Sons*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CENTRAL LAND BOARD: POWERS OF COMPULSORY PURCHASE

Earl Fitzwilliam's Wentworth Estates Co. *v.* Central Land Board and Another

Somervell, Singleton and Denning, L.JJ. 13th April, 1950

Appeal from Birkett, J. (94 SOL. J. 612; 66 T.L.R. (Pt. 2) 546).

The appellant company, the owners of a plot of land, refused to part with it to a person wishing to build a house on it except on a lease for 300 years at £20 a year inclusive of the assignment to the prospective lessee of the owners' claim in respect of the plot on the £300,000,000 compensation fund established under the Town and Country Planning Act, 1947. The prospective lessee obtained permission under Pt. III of the Act to build a house on the land, and then applied to the Central Land Board to make for his benefit a compulsory purchase or lease order in respect of the land as the owners were refusing to lease the land to him at its existing use value under the Act. The board had issued a circular explaining the incidence of development charge and setting out three methods of selling land to persons wishing to build on it, each method providing for the payment of development charge to the board and the payment for the land of a price reflecting that payment whether made by the buyer or by the seller. The board, on the prospective lessee's application, wrote to the owners of the plot observing that they were asking a price for it based on the value which the land would have had if the Act of 1947 had not been passed, and inquiring whether they were prepared to follow any, and if so which, of the three courses described in the circular. The owners replied that they would follow none of them. The local authority having intimated that it was desirable that the plot should be immediately available for building, the board made a compulsory purchase order under s. 43 (2), which the Minister of Town and Country Planning confirmed. The owners moved the court by way of appeal against the confirmation order. Birkett, J., dismissed the application and the company now appealed.

By s. 43 (1) of the Act of 1947, "the Central Land Board may, with the approval of the Minister [of Town and Country Planning] by agreement acquire land for any purpose connected with the performance of their functions under the following provisions of this Act and in particular may so acquire any land for the purpose of disposing of it for development for which permission has been granted under Pt. III of this Act on terms inclusive of any development charge payable under those provisions in respect of that development." By s. 43 (2) the board may be authorised by the Minister, "if he is satisfied that it is expedient in the public interest," to acquire land compulsorily for the purposes of s. 43 (1). Of the "following provisions" referred to in s. 43 (1) the most important are in s. 61, which relates to the ascertainment of development values, and s. 70, which relates to the fixing of development charges. (*Cur. adv. vult.*)

SOMERVELL, L.J., reading his judgment, said that it seemed to him that the task of the board in working the development charge scheme was undoubtedly impeded by sales at above existing use value. He would have expected to find in the Act some power given to the board to meet that problem. There was force in the Attorney-General's argument that the testing-of-the-market purpose was fully covered by the first limb of s. 43 (1). He (his lordship) thought that the exercise by the board of their power of compulsory purchase here was, on the facts as found, in connection with the functions of the board as the authority operating the development charge scheme, and was therefore covered by the subsection. Birkett, J., had held that the power of compulsory purchase could not be used with the sole purpose of enforcing the board's policy with regard to sales at existing use values. He (Somervell, L.J.), would have agreed with that view if that policy were considered as a policy unrelated to the functions of the board in relation to development charges. He had arrived at the same conclusion as Birkett, J., but by a somewhat different route, and was of opinion that the appeal should be dismissed.

SINGLETON, L.J., read a judgment agreeing that the appeal failed.

DENNING, L.J., reading his dissenting judgment, said that the board wished to protect the purchaser. They had laid it down as their policy that a landowner must sell his land at its existing use value only, and that they would, if necessary, exercise their powers of compulsory purchase in order to make him do so. The question was whether they were entitled to use their powers for that purpose. One had to look at other parts of the Act to see whether the ultimate purpose was one which was authorised by Parliament or not. The second part of s. 43 (1) specified the immediate purpose, but the first part must be looked at to find the ultimate purpose. It was impossible to suppose that Parliament gave the board power to acquire land compulsorily for a purpose which was not connected with their functions. Their ultimate purpose in acquiring it must be connected with the performance of their functions in levying development charge, or in payments out of the £300m. fund. The real reason why Parliament had given the board a power of compulsory purchase was, he thought, to assist them in their function of collecting the development charge. Did the board exercise their powers here for that purpose? That was the crux of the case. He thought that it was one of their purposes, for the company were asking a price so unreasonably high as to be likely to hamper the board in collecting the development charge from the purchaser. But the board certainly had another purpose in mind, too: they exercised their power in order to enforce their policy of "sales at existing use value only." That, indeed, was their dominant purpose. The validity of the board's action depended on the purpose with which it was done. There were two purposes here. What therefore was the position? If the dominant purpose were unlawful, the act was invalid, and it was not to be cured by saying that there was some other purpose also which was lawful. So, also, the validity of action of Government departments often depended on the purpose with which it was done, and there, too, the same principle applied. Just as a Government department's real purpose was crucial, so also was its true motive; they were one and the same thing. The dominant purpose of the board here was to enforce their policy. It might surprise some people to know that landowners were able to find purchasers who were ready to pay the building value of the land and also to pay the development charge; for that meant that the purchaser had to pay development value twice over, once in the price which he paid to the landowner and again in the charge which he paid to the board—subject, however, to a deduction for the amount which he received from the £300m. fund. But in practice landowners could often obtain building value for land because houses with vacant possession were so scarce and so expensive to buy. If a purchaser had to pay the development value to the State, he would presumably only pay existing use value to the landowner. That was a perfectly sound economic theory, and the Minister, with the approval of Parliament, had made regulations designed to give effect to it. But, while it was one thing to rely on economic forces, it was quite another to impose a policy on the people by legal sanctions. Parliament had not attempted to do so. It had not itself enacted any positive law that land was to change hands at existing use value only; nor had it authorised anyone else to make such a law. There were good reasons why it should not do so, for it might lead to grave injustices, as well as practical difficulties. He concluded that Parliament had deliberately preferred to rely on the economic theory that the development charge would, as a rule, leave the developer unable and unwilling to pay more than existing use value for the land. The expectations of Parliament had, however, not been fulfilled. The economic theory was not at present working out in practice, and there were many transactions at prices much in excess of existing use value. In an attempt to stop them the board had rushed in where Parliament—he would not say had feared to tread, but at any rate had not trodden. The board had issued pamphlets in which they had proclaimed their policy of "sales at existing use value only," and sought to enforce it by the use of their powers of compulsory purchase. That was, in its effect though not in its terms, a claim by a Government department to legislate. The policy in question might be excellent, but, once the board proclaimed that they would use their compulsory powers to enforce it, it ceased to be a policy and became a law—and, be it noted, a law laid down by a Government department and not by Parliament. Though in

the circular "House 1" it was called "advice," it was nevertheless a rule of conduct which all landowners were expected to obey; and, if they disobeyed, it was enforced by a powerful sanction—namely, compulsory purchase. A general rule of conduct of that description, so enforced, was legislation and nothing else, and as such it was invalid unless it had been enacted by Parliament or by someone to whom Parliament had delegated its legislative authority. The serious thing was that the policy of the board went much further than Parliament authorised them to go. Their pamphlets applied to all sales and purchases of land, whereas the compulsory powers on which they relied were expressly confined to land for which development permission had already been given; and sales of land where no development permission had been given were the great majority of sales. Many a landowner reading the pamphlet in question would feel that, if he tried to sell his land for more than existing use value, the board might use their compulsory powers against him, and he would in consequence refrain from selling at any price higher than existing use value, and innocent people might be led to forgo their rights when there was no law on the Statute Book to compel it. His conclusion, therefore, was that the ultimate object of the board and the Minister was not lawful, for it was not their function to legislate. He would willingly support their action if he could in this particular case, but there was a principle at stake which was far more important than any particular case. He would therefore be in favour of allowing the appeal.

Appeal dismissed. Leave to appeal to the House of Lords.

APPEARANCES; *Sir David Maxwell Fyfe*, K.C., and *R. Davison* (*Warren, Murton & Co.*, Barnsley); *Sir Hartley Shawcross*, K.C. (A.-G.) and *J. P. Ashworth* (*Treasury Solicitor*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

DIVISIONAL COURT

ORDER FOR DESTRUCTION OF DOG: JUSTICES' POWERS

Rhodes *v.* Heritage

Lord Goddard, C.J., Oliver and Cassels, JJ.
6th April, 1951

Case stated by Aylesbury justices.

An information was preferred against the defendant under s. 2 of the Dogs Act, 1871, alleging that a certain dog belonging to him was dangerous and not kept under proper control. The justices adjudged the dog dangerous and ordered the defendant to keep it under proper control. Some months later a further information was preferred alleging that the defendant had failed to comply with the previous order on two specified dates. The justices thereupon adjudged the dog dangerous and ordered that it should be destroyed. The defendant appealed. By s. 2 "Any court of summary jurisdiction may take cognizance of a complaint that a dog is dangerous and not kept under proper control, and, if it appears to the court . . . that such dog is dangerous . . . the court may make an order in a summary way directing the dog to be kept by the owner under proper control or destroyed, and any person failing to comply with such order shall be liable to a penalty . . ."

LORD GODDARD, C.J., said that s. 2 did not give the justices power, when a person was summoned for failing to comply with a previous order to keep a dog under control, to make an order on that information for the destruction of the dog. If the complaint on the second occasion had been that the dog was dangerous on the dates specified, then, notwithstanding their previous order, the justices could have made an order for its destruction. But the appellant was charged only with failure to comply with the previous order, and therefore the only penalty which could be imposed on him was a fine for every day on which he failed to keep the dog under proper control. The case must go back to the justices with an intimation that on the information before them they had no power to order the dog to be destroyed. What they could have done, and might still do, was to fine the defendant for every day on which the dog was not kept under proper control.

OLIVER and CASSELS, JJ., agreed.

APPEARANCES: *P. Curtis Bennett* (*Burton, Yeates & Hart*, for *Lightfoot & Lowndes*, Princes Risborough). The prosecutor did not appear, and was not represented.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY DIVISION

DIVISIONAL COURT

LEGAL AID: COSTS INCURRED BEFORE CERTIFICATE OBTAINED

Hatch *v.* Hatch

Lord Merriman, P., and Willmer, J.
9th April, 1951

Question of costs arising on dismissal of an appeal from justices.

The husband's appeal having been dismissed, counsel for the wife asked for an order for costs, whereupon it appeared that both parties had been granted civil aid certificates, and that the capital assessment and contribution of each was nil. On 3rd October, 1950, the wife was served with notice of appeal against the finding of the justices, and on 5th October, a summons was issued for security for her costs. On 11th October, when the summons came before the registrar, he was informed that the husband had applied for a civil aid certificate. The summons was accordingly adjourned, and the appeal stayed. The wife then took immediate steps to obtain a certificate. The husband's certificate was granted on 27th November, 1950, the wife's on 31st January, 1951, and the stay was removed on 29th March, 1951. Certain costs had, however, been incurred by the wife before she learned of her husband's application for legal aid; and it was in respect of those costs, for which she was not covered by her civil aid certificate, that the question arose. She had not incurred any further costs after 11th October, 1950.

LORD MERRIMAN, P., said that the case revealed an unfortunate lacuna in the Legal Aid (General) Regulations. The circumstances existing here might apply in greater or less degree to almost every case, and he called attention to them in order that the point might be taken into account on any reconsideration of the regulations. The difficulty was that the wife was not entitled to tax any costs before the date of her certificate. It seemed absurd that a wife, who had been granted a certificate on an appeal by her husband, and who had successfully opposed that appeal, was not entitled to the earlier costs. It was not right that either side should bear the full costs before the grant of the wife's certificate. But the husband, whose appeal had been dismissed, would be ordered to pay the greater share.

WILLMER, J., agreed. Order accordingly.

APPEARANCES: *H. S. Law* (*Butt & Bowyer*, for *Rutter and Rutter*, Shaftesbury); *John Latey* (*Gibson & Weldon*, for *Rutter and Rutter*, Wincanton).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

HOUSE OF LORDS

A. PROGRESS OF BILLS

Read First Time:—

Abingdon Corporation Bill [H.C.] [10th April.
Army and Air Force (Annual) Bill [H.C.] [10th April.
Leasehold Property (Temporary Provisions) Bill [H.C.] [10th April.
London County Council (General Powers) Bill [H.C.] [10th April.
Saint Benet Gracechurch Bill [H.C.] [10th April.
Salmon and Freshwater Fisheries (Protection) (Scotland) Bill [H.C.] [10th April.
Sea Fish Industry Bill [H.C.] [10th April.

Read Third Time:—

Falkirk Burgh Extension, &c., Order Confirmation Bill [H.C.] [11th April.

In Committee:—

Rag Flock and Other Filling Materials Bill [H.L.] [10th April.

B. QUESTIONS

DEVELOPMENT CHARGES

LORD MESTON rose to ask what was the practice and policy of the Central Land Board in determining the amount of a development charge where planning permission was given for only a limited period. It would, he said, be interesting to know

on what basis the charge was levied in such circumstances. Referring to a specific case which had been brought to his notice, Lord Meston said a man was desirous of erecting a factory in Brighton and he had obtained limited planning permission for a period of five years. Notwithstanding his protest, the district valuer, supported by the Central Land Board, had insisted on assessing the development charge on the basis that the factory had a physical life of fifty years. This struck Lord Meston as being unfair.

The Paymaster-General (Lord Macdonald of Gwaenysgor) said that the Central Land Board, in accordance with the requirements of the 1947 Act, normally determined the development charge as the difference between the value of the land with the limited planning permission and its value without that permission. This produced a low charge in respect of the limited period. But if permission was granted for a further period a higher charge would be payable. This might cause hardship. The Board therefore offered developers the choice of an alternative assessment under which the charge was calculated on the rent which would be payable for the land by anyone contemplating erecting the building thereon. This method produced the same charge for the initial permission as for any further permission of the same duration, and many developers preferred it.

Lord Meston had not apprised him in advance of the specific case raised and he could not therefore deal with it, but he had himself come across a similar case which would serve to illustrate the Central Land Board practice. A developer was given a planning permission to erect a factory on an undeveloped plot of land, and to use it for five years, on condition that at the end of the five years the factory was pulled down. If the factory was really going to be pulled down at the end of the five years it was obvious that this planning permission had a relatively small value. The Board, in assessing the charge, had to ascertain the difference between the value of the undeveloped land with the planning permission and its value without that permission. In view of the cost of the erection of the building, and of its destruction at the end of five years, the value of the land with permission could not be high, and the development charge assessed on this basis was accordingly low. If, however, at the end of the period the factory was not pulled down, but planning permission was obtained to retain it for a further five years, then the further development charge was the difference between the value of the land with a factory on it, with permission to use the factory for five years, less the value of the land with a factory on it which could not be used for any purpose. It followed, accordingly, that the development charge was relatively high. A low charge followed by a high charge in this manner might well cause hardship. Accordingly the Board offered developers who obtained planning permission for a limited period the choice of an alternative assessment. [12th April.

HOUSE OF COMMONS

A. Progress of Bills

Read First Time :—

Festival of Britain (Additional Loans) Bill [H.C.] [12th April.

To authorise the making of additional loans to the company formed for the purpose of managing the festival gardens provided in Battersea Park as part of the Festival of Britain, 1951 ; and for purposes connected therewith.

Fire Services Bill [H.C.] [11th April.

To amend sections twenty-six and twenty-seven of the Fire Services Act, 1947.

Read Second Time :—

Canterbury Extension Bill [H.L.] [9th April.
Dartmouth Harbour Bill [H.L.] [9th April.
Mineral Workings Bill [H.C.] [9th April.

Read Third Time :—

Lloyd's Bill [H.L.] [9th April.

B. Questions

Lettings (Premium)

Mr. Dalton said he was aware of the decision of the Old Street Police Court on 2nd March that a local authority had no power to prosecute for the charging of illegal premiums for lettings. In reply to Mr. Gibson's inquiry as to whether, in view of the practical impossibility for the tenant involved to institute such prosecutions, he would consider taking action to ensure that the law against taking such premiums was enforced, Mr. Dalton said that the decision in question was at present the subject of an application to the High Court, and he proposed to await the outcome of the application before considering what action to take. [10th April.

Copyright Law (Committee)

Mr. Harold Wilson stated that, after consultation with the Lord Chancellor, he had decided to appoint a committee with the following terms of reference : "To consider and report whether any, and if so what, changes are desirable in the law relating to copyright in literary, dramatic, musical and artistic works with particular regard to technical developments and to the revised International Convention for the Protection of Literary and Artistic Works signed at Brussels in June, 1948, and to consider and report on related matters." Lord Reading had consented to act as chairman. [10th April.

Sentence, Bow Street (Error)

In reply to a number of questions on the case of Mr. Arnold Johnson Ross, who was wrongly convicted at Bow Street Police Court on 29th March of the theft of a wallet, Mr. Chuter Ede said that as soon as information reached the court that a mistake had been made by the complainant, the magistrate substituted a remand warrant for the warrant of commitment to prison issued earlier. A telephone message was sent to Pentonville Prison and Mr. Ross was kept in the officer's room in the reception wing until the remand warrant, which was sent by special messenger, arrived at 7.35 p.m. This warrant was conditioned for bail and Mr. Ross was thereupon released on bail. He appeared in court again the following morning and, after the magistrate had heard the fresh evidence, he was discharged. Mr. Ede said he was satisfied that immediate steps were taken by everyone concerned to remedy the unfortunate mistake as soon as it was discovered. The complainant's father had already paid Mr. Ross more than double the two days' wages which the latter had lost, and Mr. Ede considered there were no grounds for paying compensation out of public funds. Lord Winterton asked whether, in view of the disturbing effect on the public mind resulting from the case—that a man should be convicted on the evidence of one young man—he would consider circularising magistrates, stipendiary and voluntary, with a view to reviewing the rules of evidence. Mr. Ede said he shared the sense of disturbance which had been expressed. He did not think the magistrates were responsible for reviewing the rules of evidence, but he hoped that the publicity which had been given to the case, and the clear concern of all present in the House of Commons, would make an impression on magistrates who had to deal with this type of case. [12th April.

STATUTORY INSTRUMENTS

Advertisement Lighting (Prohibition) (Revocation) Order, 1951. (S.I. 1951 No. 620.)
Basildon New Town Sewerage Order, 1951. (S.I. 1951 No. 608.)
Benzole and Allied Products (Control) (Amendment) Order, 1951. (S.I. 1951 No. 621.)
Birmingham-Great Yarmouth Trunk Road (West Walton and other Diversions) Order, 1951. (S.I. 1951 No. 578.)
Bread (Amendment) Order, 1951. (S.I. 1951 No. 592.)
Canals (Additional Charges) (Amendment) Regulations, 1951. (S.I. 1951 No. 603.)
Central Midwives Board for Scotland (Amendment) Rules, 1951, Approval Instrument, 1951. (S.I. 1951 No. 591 (S. 30).)
Cereal Fillers (Amendment) Order, 1951. (S.I. 1951 No. 580.)
Cream (Revocation) Order, 1951. (S.I. 1951 No. 593.)
Domestic and Ornamental Pottery (Manufacture, Marking and Supply) (Amendment) Order, 1951. (S.I. 1951 No. 595.)
Export of Goods (Control) (Amendment No. 6) Order, 1951. (S.I. 1951 No. 589.)
Folkestone-Brighton-Southampton-Dorchester-Honiton Trunk Road (Upper and Old Shoreham Roads, Shoreham) Order, 1951. (S.I. 1951 No. 558.)
Fustian Cutting Wages Council (Great Britain) Wages Regulation Order, 1951. (S.I. 1951 No. 567.)
Harbours, Docks and Piers (Additional Charges) (Amendment) Regulations, 1951. (S.I. 1951 No. 602.)
Hat, Cap and Millinery Wages Council (Scotland) Wages Regulation (Amendment) Order, 1951. (S.I. 1951 No. 566.)
Higham Ferrers and Rushden Water Board Order, 1951. (S.I. 1951 No. 574.)

Hill Sheep Subsidy Payment (Northern Ireland) Order, 1951. (S.I. 1951 No. 604.)
Hydrocarbon Oils (Incorporation of Gas) Regulations, 1951. (S.I. 1951 No. 590.)
London-Penzance Trunk Road (Micheldever Tunnel Section) Order, 1951. (S.I. 1951 No. 599.)
Pin, Hook and Eye, and Snap Fastener Wages Council (Great Britain) Wages Regulation (Amendment) Order, 1951. (S.I. 1951 No. 597.)
Railways (Additional Charges) (Amendment) Regulations, 1951. (S.I. 1951 No. 601.)
Registered Designs (Extension of Time) (Federal Republic of Germany) Rules, 1951. (S.I. 1951 No. 594.)
Safeguarding of Industries (Exemption) (No. 4) Order, 1951. (S.I. 1951 No. 587.)
Schools Registration (Scotland) Rules, 1951. (S.I. 1951 No. 569 (S. 29).)
Somerset and Bristol (Alteration of Boundaries) Order, 1951. (S.I. 1951 No. 563.)
Spilsby Water Order, 1951. (S.I. 1951 No. 579.)
Stamped or Pressed Metal-Wares Wages Council (Great Britain) Wages Regulation Order, 1951. (S.I. 1951 No. 598.)
Teachers Superannuation (Somaliland Protectorate) Scheme, 1951. (S.I. 1951 No. 596.)
Utility Apparel (Men's and Boys' Shirts, Underwear and Nightwear) (Manufacture and Supply) (Amendment) Order, 1951. (S.I. 1951 No. 600.)
Utility Apparel (Women's and Maids' Outerwear) (Manufacture and Supply) Order, 1951. (S.I. 1951 No. 586.)
Utility Handkerchiefs (Marking and Manufacturers' Prices) (Amendment No. 2) Order, 1951. (S.I. 1951 No. 585.)
Utility Handkerchiefs (Maximum Prices) Order, 1951. (S.I. 1951 No. 584.)
Utility Mattresses, Pillows and Bolsters (Manufacture and Supply) (Amendment) Order, 1951. (S.I. 1951 No. 583.)
Utility Mattresses, Pillows and Bolsters (Maximum Prices) (Amendment) Order, 1951. (S.I. 1951 No. 582.)
Wages Regulation (Licensed Non-Residential Establishment) (Amendment) Order, 1951. (S.I. 1951 No. 588.)
Wholesale Mantle and Costume Wages Council (Great Britain) Wages Regulation Order, 1951. (S.I. 1951 No. 577.)
Wrexham and East Denbighshire Water Order, 1951. (S.I. 1951 No. 576.)

POINTS IN PRACTICE

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Intestacy—Succession—Deceased Sister's Illegitimate Child

Q. B has recently died intestate a bachelor without parent, leaving a brother and two sisters, one of whom is taking out letters of administration to B's estate. There is also an illegitimate child who has attained twenty-one (the issue of another sister who died a spinster in 1930). Under the Administration of Estates Act, 1925, B's property is distributable amongst his surviving brother and sisters on the statutory trusts. Is the illegitimate child entitled to take the share his mother would have taken had she been living, or does the illegitimate child take nothing? The Legitimacy Act, 1926, would appear to assist the illegitimate child, but the point is by no means clear to us.

A. Although we are not aware of any express authority on the interpretation of s. 9 (1) of the Legitimacy Act, 1926, our opinion is that the subsection entitled the illegitimate child to succeed to his mother's share in the same way as a legitimate child, provided, that is, there are no legitimate children, of whom there are none in the present case. We fully agree that the subsection is by no means clear in its reference to "Where . . . the mother . . . dies intestate as respects all or any of her real or personal property . . . ", particularly as there was no interest under B's intestacy vested in the deceased sister at the date of her death. An added difficulty arises in that existence or non-existence of a will is immaterial to the destination of the deceased parent's share, which is governed solely by ss. 46 and 47 of the Administration of Estates Act, 1925 (compare the position under s. 33 of the Wills Act, 1837), and which accordingly is not property over which the mother of the illegitimate child was ever capable of exercising testamentary volition. At the same time we feel that a generous construction would be placed on s. 9 (1) of the Legitimacy Act, 1926. In Parry's Law of Succession, 2nd ed., p. 155, it is stated that "where the mother of an illegitimate child dies intestate after 1926 without leaving legitimate issue her surviving, the illegitimate child, or his issue if he is dead, is entitled to any interest to which he or his issue would have been entitled had he been born legitimate." Nevertheless, we feel that, unless agreement among the beneficiaries can be achieved, the personal representatives of B would be well advised to obtain the decision of the court.

Service of Notice to Quit on National Coal Board

Q. We act for the owner of a shop of which the National Coal Board is an annual tenant. The National Coal Board is constituted a body corporate by s. 2 of the Coal Industry Nationalisation Act, 1946, but we cannot find any provision in this Act or elsewhere with regard to the proper person on whom or places where we may serve a notice for the National Coal Board to quit this shop. The rent for this shop has always been paid by the "X" Division of the National Coal Board, and accordingly we have served the notice to quit by registered post upon the National Coal Board "X" Division at the address of their office; delivery of this notice has been acknowledged on a Post Office Form A.R., which is stamped "National Coal Board" and signed by a gentleman who, we believe, is the accountant to the "X" Division. We feel a doubt, however, whether this notice has been properly served or whether it should have been served at the head office of the National Coal Board in London. Woodfall's Landlord and Tenant, 24th ed., at p. 979, states that service on a corporation may be on one of its officers. We do not wish, unless it is absolutely essential, to serve a fresh notice, since we do not wish the National Coal Board to avail itself of the Landlord and Tenant Act, 1927. We should be glad if you could advise:—

(1) Was the notice served in the circumstances mentioned above validly served?

(2) If not, should a fresh notice be served on the National Coal Board at their head office in London?

A. In our view the proper person to be served with a notice to quit is the "X" Regional Board's Estate Manager. On general principles (there appears to be no regulation on the point), however, a notice served on an agent of the Board is, we consider, good, and in view of the circumstances mentioned we would rely on the notice already served.

SOCIETIES

The annual general meeting of the Blackburn Incorporated Law Association was held on 29th March, 1951. Mr. F. A. Heys, B.A., was elected President in succession to Mr. A. Carter, and Mr. H. Backhouse, O.B.E., was elected Vice-President. Mr. F. G. Howarth and Mr. J. W. Hollows, LL.B., were re-elected Hon. Treasurer and Hon. Secretary respectively.

The annual general meeting of the Hull Incorporated Law Society was held on 5th April, 1951, when Mr. N. W. Slack was elected President and Colonel A. V. Rhodes, M.C., T.D., D.L., J.P., was elected Vice-President. Mr. D. P. Shackles was re-elected Honorary Secretary and Mr. P. S. Briggs was elected Honorary Treasurer. The membership of the Society is now 135 ordinary members and four annual subscribers. It was reported that the removal of the Society's library to its new and improved premises would be carried out very shortly and a formal opening ceremony would be arranged.

The 63rd annual general meeting of the Monmouthshire Incorporated Law Society was held at the Law Library,

Newport, on 30th March, 1951, when the annual report of the council was presented. Mr. F. Taynton Evans was elected President for the ensuing year, and Mr. G. Roy Jenkins and Mr. D. W. Evans Vice-Presidents; Mr. J. Kenneth Wood Honorary Treasurer; Mr. S. M. T. Burpitt Honorary Librarian and Mr. W. Pitt Lewis Honorary Secretary. The following were elected members of the council: Messrs. J. Owen Davis, Joshua Dawson, E. I. P. Bowen, S. P. Gunn, Mostyn C. Llewellin, Guy Lancelot Brereton Francis, Rowland John Rowlands, R. Basset Spencer, Roy Harmston and Vernon Lawrence.

The annual general meeting of the NOTTINGHAM INCORPORATED LAW SOCIETY was held at the Guildhall, Nottingham, on 5th April, when the following officers were elected for the ensuing year: President, Mr. William Foster; Vice-President, Mr. Curzon Cursham; Hon. Treasurer, Mr. H. A. Wardle; Hon. Secretary, Mr. R. J. T. Smith.

At the April Court of THE WORSHIPFUL COMPANY OF SOLICITORS OF THE CITY OF LONDON Mr. R. M. Hodges, Mr. J. D. H. Bankes, Mr. D. E. Goy, Mr. F. C. S. Tufton, Mr. T. I. Johnson Gilbert, Mr. R. A. A. Holt and Mr. D. H. Nicholls were admitted to the Freedom of the Company and Mr. J. H. Tayler was admitted to the Livery. Mr. J. A. Pott was admitted to the Freedom and Livery. Three apprentices were bound to members of the Company. The total membership of the Company now exceeds 400 for the first time in its history, there being 290 Liverymen and 115 Freemen.

The forty-eighth annual general meeting of the LIVERPOOL LAW CLERKS' SOCIETY will be held at the Law Library, Tower Building, 22 Water Street (Ground Floor), Liverpool, on Tuesday, 24th April, 1951, at 5.30 p.m.

An ordinary meeting of THE MEDICO-LEGAL SOCIETY will be held at Manson House, 26 Portland Place, W.1 (Tel. Langham 2127), on 26th April, 1951, at 8.15 p.m., when a paper will be read by Dr. R. Donald Teare on "The Medico-Legal Significance of Death following Abortion."

NOTES AND NEWS

Honours and Appointments

Mr. E. E. LIGHTFOOT has been appointed Under-Sheriff of Cumberland.

The Masters of the Bench of the Middle Temple have awarded Blackstone Entrance Scholarships to Mr. R. DAY, Mr. OWEN THOMAS and Mr. P. E. WEBSTER.

Miscellaneous

THE TRANSPORT ARBITRATION TRIBUNAL

PRACTICE DIRECTION No. 2

APPLICATIONS TO THE TRIBUNAL TO STATE A CASE FOR DETERMINATION BY THE COURT OF APPEAL UNDER S. 106 (3) OF THE TRANSPORT ACT, 1947

The Transport Arbitration Tribunal has given the following Direction with regard to applications to the Tribunal to state, in the form of a special case for determination by the Court of Appeal under s. 106 (3) of the Transport Act, 1947, a question of law which has arisen before the Tribunal:—

1. The Tribunal will ordinarily state a case as a matter of course at the request of any party to proceedings before it if application in writing is made to the clerk within twenty-one days after judgment in those proceedings is delivered. The Tribunal may refuse to state a case if it appears to the Tribunal that the question propounded is not a question of law or did not arise in the proceedings or that the application is frivolous.

2. An application under the preceding paragraph of this Direction may be by letter and must indicate, not necessarily in its final form, what is the question of law that has to be stated. As soon as may be after filing the application, the party making the application must serve a copy thereof upon every other party to the proceedings.

3. Any party to the proceedings who desires to oppose the application may, within fourteen days after service upon him of a copy of the application, apply to the clerk for an appointment for the hearing of his objections thereto, and must give written notice of the appointment to every other party to the proceedings in accordance with r. 25 (1), setting out therein the grounds of his objection, and at the same time deliver at the office one copy of such notice.

4. After the expiration of the period of twenty-one days mentioned in para. 1 of this Direction, there will be a further period of twenty-one days within which any party may make formal application to the Tribunal to state a case. On such an application it will be necessary to show some good reason why an application was not made under para. 1 of this Direction, and the Tribunal may grant the application on terms, or unconditionally, or refuse it on the grounds that no good reason is shown for the delay or on any of the grounds mentioned in para. 1 of this Direction. The Tribunal will not, however, debar itself from stating a case after any lapse of time if the circumstances appear to justify doing so.

5. A party making an application under para. 4 of this Direction must obtain from the clerk an appointment for the hearing thereof and give written notice of the appointment to every other party to the proceedings in accordance with r. 25 (1), indicating therein, not necessarily in its final form, the question of law that has to be stated, and the reasons why an application was not made under para. 1 of this Direction.

6. Where, upon an application under this Direction, the Tribunal determines to state a case, the party applying therefor will ordinarily bring in a draft of the case, but the Tribunal may in any case order that some other party shall do so.

7. The party having the carriage of the matter must file the draft case at the office not later than fourteen days after the Tribunal's decision to state the case shall have been given, and, as soon as may be thereafter, shall serve a copy thereof upon every other party to the proceedings.

8. Subject to the provisions of r. 25 (2) as to the making of applications by letter, the party having the carriage of the matter must apply to the clerk for an appointment to settle the draft case within fourteen days after its filing, and must serve a notice of such appointment upon every party to the proceedings in accordance with r. 25 (1).

9. If the party having carriage of the matter is in default (*a*) any other party to the proceedings may apply to the Tribunal, after the expiration of the period specified in this Direction, for taking the step whereof the party having such carriage is in default, for leave to take over the carriage of the matter or for a stay of proceedings, and to any such application the provisions of r. 25 shall apply, or (*b*) subject to the provisions of r. 26, the Tribunal may of its own motion after the expiration of the said period make such an order as aforesaid.

10. Proceedings relating to the stating of a case will be regarded as interlocutory proceedings for the purposes of the Rules.

11. Subject to any order of the Court of Appeal, paras. 6 to 10 (inclusive) of this Direction will apply where the Tribunal is ordered by the Court of Appeal to state a case, with the substitution of the date of the order of the Court of Appeal for the date of the Tribunal's decision to state a case.

12. The Rules referred to in this Direction are the Transport Arbitration Tribunal Rules, 1947, and expressions used in this Direction (if not inconsistent with the context or subject-matter) have the same meaning as in the Rules.

13. This Direction does not apply to proceedings which under Pt. VIII of the Act are to be treated as Scottish proceedings.

J. A. ARMSTRONG,
Clerk to the Tribunal.

21*st March*, 1951.

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